

DEC 09 2004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Inventor	John Timothy Otto et al.	Group Art Unit: 3644
Appln. No.:	10/814,384	Examiner: T. Dinh
Filed:	March 31, 2004	
For:	ICE DETECTOR FOR IMPROVED ICE DETECTION AT NEAR FREEZING CONDITION	
Docket No.:	B04.12-0075	

CERTIFICATION OF TELEFACSIMILE TRANSMISSION

Commissioner for Patents
P.O. Box 1450
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(703) 872-9306

Sir:

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1. Response to Restriction Requirement.

WESTMAN, CHAMPLIN & KELLY, P.A.

Date: November 9, 2004

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RESPONSE TO RESTRICTION REQUIREMENT

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This is in response to the Office Action dated November 10, 2004 in which claims 1-22 were subject to a Species Restriction Requirement. Election is hereby made to species A/J shown in FIGS. 1 through 4 and 10-1. In the Office Action, it was asserted that the application contains fourteen distinct species, labeled species A through N. It is respectfully submitted, that at a minimum, FIGS. 1 through 4 and 10-1 are directed to the same species. As can be clearly seen in these drawings, the probe 20 illustrated in FIGS. 1 through 4 is the same as probe 20 shown in FIG. 10-1. Therefore, the decision expressed in the Office Action to place these figures in two different species, species A and species J, is respectfully traversed.

While the assertion in the Office Action that the application contains thirteen different species (assuming species A and J are combined) is not expressly traversed, it is respectfully submitted that the Office Action does not meet the requirements required to sustain a Species Restriction Requirement. M.P.E.P. §806.04(f) states that "[c]laims to be restricted to different species must be mutually exclusive. The general test as to when the claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first. This is frequently expressed by saying that claims to be restricted to different species must recite the mutually exclusive characteristics of

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such species." It is respectfully submitted that the Office Action has not shown that the claims subject to the restriction requirement to different species are mutually exclusive. Applicant is expressly not making an assertion relating to whether the different species identified by the Examiner are patentably distinct from each other.

Given the election of species A/J made above, claims 1-4 are believed to be readable thereon. It is respectfully submitted that claim 1 is generic to all species identified in the Office Action. Claim 2 is generic to at least species A/J, K, L, M and N. Claim 3 is generic to at least species A/J, L, M and N. Claim 4 is generic to at least species A/J, L and M.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

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